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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,741	03/04/2004	LaVern Alecci	04002	3613

23338 7590 05/27/2005

DENNISON, SCHULTZ, DOUGHERTY & MACDONALD
1727 KING STREET
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ALEXANDRIA, VA 22314

EXAMINER

GUADALUPE, YARITZA

ART UNIT PAPER NUMBER

2859

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/791,741	ALECCI, LAVERN	
	Examiner	Art Unit	
	Yaritza Guadalupe McCall	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 is/are allowed.
- 6) ☒ Claim(s) 11-13, 16 and 17 is/are rejected.
- 7) ☒ Claim(s) 14 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

In response to Amendment filed March 15, 2005

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 11 – 12 and 16 - 17 are rejected under 35 U.S.C. 102 (b) as being anticipated by Zerbel (US 1,838,607).

With regards to claim 11, Zerbel discloses a bracket tool comprising a first leg having a first panel (1) and a second panel (4) attached to said first panel along a common edge and defining a space therebetween (See Figure 3); a second leg having a first panel (2) and second panel (5) attached to said first panel along a common edge and defining a space therebetween; said first leg having a first end (3), and said second leg having a first end (3), wherein said first leg first end is attached to said second leg first end at an angle (See Figure 3); a bar member (6) having first end attached to said first leg and a second end attached to said second leg.

Furthermore, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art

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apparatus satisfying the claimed structural limitations. *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997).

In regards to claim 12, Zerbel also discloses a bracket wherein said angle between the first and the second legs is 90 degrees.

Regarding claim 16, Zerbel also discloses a bracket wherein said first leg first panel is attached to said first leg second panel at a right angle.

With regards to claim 17, Zerbel further teaches a bracket wherein said second leg first panel is attached to said second leg second panel at a right angle.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 13 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Zerbel (US 1,838,607).

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Zerbel discloses a bracket as stated in paragraph 2 above.

Zerbel does not disclose the angle between the first and second legs being 45 degrees as stated in claim 13.

In regards to claim 13 : Zerbel discloses a bracket having a first leg and a second leg connected at an angle of 90 degrees. However, to connect said first and second legs at an angle of 45 degrees, is only considered to be the “ optimum ” value of the angle for the bracket, that a person having ordinary skill in the art at the time the invention was made would have been able to determine using routine experimentation based, among other things, on the desired accuracy and since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See *In re Boesch*, 205 USPQ 215 (CCPA 1980).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide an angle of 45 degrees between the first and second legs of the bracket in order to increase the versatility of the tool by adjusting its size and shape to fit to multiple sizes of corners.

Allowable Subject Matter

5. Claims 14 – 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claim 18 is allowed.

a. ^{18 is} Claims ~~1-2~~ are allowable over the Prior Art of Record because it fails to teach or suggest a in combination with a first stud wall and a second stud wall each having an upper beam, a lower beam, and a plurality of vertical beams therebetween, a plumb bob bracket, comprising: a first leg having a first panel and a second panel attached to said first panel along a common edge and defining a space therebetween; a second leg having a first panel and second panel attached to said first panel along a common edge and defining a space therebetween; said first leg having a first end, said second having a first end, wherein said first leg first end is attached to said second leg first end at an angle; a bar member having first end attached to said first leg and a second end attached to said second leg; wherein said plumb bob bracket is attached to said first stud wall upper beam in a manner that said first stud wall upper beam is positioned within said space between said first and second panels of said first leg, and said second stud wall upper beam is positioned with said first and second panels of said second leg in combination with the remaining limitations of the claims.

Response to Arguments

7. Applicant's arguments with respect to claims 1 - 10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe McCall whose telephone number is (571)272-2244. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yaritza Guadalupe-McCall
Patent Examiner
Art Unit 2859
May 18, 2005



CHRISTOPHER W. FULTON
PRIMARY EXAMINER